

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALLY FINANCIAL INC. and ALLY BANK,

Plaintiffs,

ORDER

20-CV-1281 (MKB) (RLM)

v.

COMFORT AUTO GROUP NY LLC, HESHY GOTTDIENER, and ROUTE 206 AUTO GROUP, LLC,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiffs Ally Financial Inc. and Ally Bank commenced the above-captioned action on March 9, 2020, against Defendants Comfort Auto Group NY LLC and Heshy Gottdiener, (Compl., Docket Entry No. 1), and filed an Amended Complaint adding Route 206 Auto Group, LLC as a Defendant on May 8, 2020. (Am. Compl., Docket Entry No. 9.) Plaintiffs allege that Defendants defaulted on a series of commercial loans and financing agreements and seek both injunctive relief and monetary damages for Defendants' alleged breach of contract and breach of guaranty. (Am. Compl. ¶¶ 150–242.) In their Third Amended Answer, Defendants assert counterclaims of breach of contract and breach of the covenant of good faith and fair dealing. (Third Am. Answer ¶¶ 41–52, Docket Entry No. 44.)

Currently before the Court is Plaintiffs' July 22, 2021 letter motion for sanctions and default "given Defendants' repeated non-compliance with this Court's Orders in connection with discovery and for Defendants' overall cessation of defending this action." (Letter Mot. for Sanctions and Default, Docket Entry No. 71.) On September 21, 2021, the Court referred the motion to Magistrate Judge Roanne L. Mann for a report and recommendation. (Order Referring

Letter Mot. dated Sept. 21, 2021.) Judge Mann then ordered Defendants to show cause why their Third Amended Answer should not be stricken and a default judgment entered against them. (Order to Show Cause, Docket Entry No. 78.) Defendants never responded. By report and recommendation dated November 23, 2021 (the “R&R”), Judge Mann recommended that the Court grant Plaintiffs’ motion to strike Defendants’ answer and enter default in Plaintiffs’ favor. (R&R, Docket Entry No. 79.) As explained below, the Court adopts the R&R.

I. Background

After Defendants failed to respond to Plaintiffs’ initial discovery requests, Plaintiffs moved to compel discovery on January 26, 2021. (Letter Mot. to Compel Disc., Docket Entry No. 53.) Judge Mann granted the motion in part, setting a new discovery schedule and ordering Defendants to participate on pain of sanctions. (Mem. & Order, Docket Entry No. 56.) Defendants did not respond, and on March 22, 2021, Plaintiffs moved for sanctions. (Mot. for Sanctions, Docket Entry No. 60.) When Judge Mann ordered Defendants to show cause why the motion for sanctions should not be granted, (Order dated Mar. 23, 2021; Order dated Mar. 29, 2021), Defendants failed to respond. Defendants’ counsel then sought to withdraw from the case “due to the Defendants’ lack of cooperation.” (Resp. to Mot., Docket Entry No. 61.) Judge Mann granted the motion to withdraw, warning Defendants that “although individuals are permitted to represent themselves . . . in federal court, entities are not, and the failure of an entity to secure representation is grounds for entry of judgment against the unrepresented entity.” (Order dated June 17, 2021.)

On July 30, 2021, Judge Mann granted Plaintiffs’ motion for sanctions, precluding Defendants from using their “documents and witness testimony” and imposing a \$500 monetary sanction. (Mem. & Order, Docket Entry No. 72.) On September 3, 2021, the Court ordered

Defendants to update the Court on the status of securing counsel and to respond to Plaintiffs' pre-motion conference request in anticipation of a motion for summary judgment. (Mem. & Order, Docket Entry No. 76; Order dated Sept. 3, 2021.) Defendants have not complied with these orders.

No objections to the R&R have been filed and the time for doing so has passed.

II. Discussion

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R. R. Co.*, 832 F. App'x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) ("Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'") (first quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985)); *Wagner v. Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's [r]eport and [r]ecommendation if

the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1).

III. Conclusion

Accordingly, the Court grants Plaintiffs’ motion to strike Defendants’ answer and for entry of default. Plaintiffs are directed to file a proposed judgment within fourteen (14) days of this Order.

Dated: January 6, 2022
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge